



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2007-1092; MI-87-1; EPA-R05-OAR-2018-0121;  
FRL-9998-75-Region 5]**

**Air Plan Approval; Michigan; Ohio; Corrections**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This action corrects codification errors in the Michigan State Implementation Plan (SIP) for changes to the Permit to Install requirements of Part 2 and the Emission Limitations and Prohibitions found in the Part 9 rules of the Michigan Administrative Code. This action also corrects a codification error in the Ohio SIP for changes to the Ohio air permitting rules at Ohio Administrative Code (OAC) 3745-31.

**DATES:** This final rule is effective on **[insert date of publication in the Federal Register]**.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328, [panos.christos@epa.gov](mailto:panos.christos@epa.gov).

**SUPPLEMENTARY INFORMATION:** On separate occasions, the Environmental Protection Agency (EPA) made inadvertent

codification errors when it approved revisions to Michigan's and Ohio's SIP. The first of these took place on September 6, 2006 (71 FR 52467). At that time, EPA approved revisions to the format of materials submitted by the state of Michigan that are incorporated by reference (IBR) into its SIP and amended the list of EPA-approved Michigan regulations at 40 CFR 52.1170(c), which included Michigan's Part 9 rules. In the final rule published in the Federal Register on September 6, 2006 (71 FR 52467, on page 52475, EPA mistakenly listed the Part 9 rules with a prefix of R 339 instead of R 336. The prefix was subsequently corrected for R 336.1912 on October 26, 2007 (72 FR 60783) on page 60786, and for R 336.1902 on June 29, 2018 (83 FR 30571) on page 30573. This document corrects the prefix for the remaining Part 9 rules cited in 40 CFR 52.1170(c) as R 339.1906, R 339.1910, R 339.1911, R 339.1915, R 339.1916, and R 339.1930 by changing the prefix so the rules will now read as R 336.1906, R 336.1910, R 336.1911, R 336.1915, R 336.1916, and R 336.1930.

The second action took place on August 31, 2018 (83 FR 44485). At that time, EPA published a final rule approving changes to the State of Michigan's minor source permitting rules that are contained in Part 2 of the Michigan Administrative Code. However, the codification of that action erroneously listed the state effective date for Rules 336.1203, 336.1204, 336.1206, 336.1212, and 336.1216 as 7/26/1995, when the correct

state effective date should be 7/01/2003. This document corrects the erroneous amendatory language published in the Federal Register on August 31, 2018 (83 FR 44485), in the table entitled "EPA-APPROVED MICHIGAN REGULATIONS" on page 44497, for entries R 336.1203, R 336.1204, R 336.1206, R 336.1212, and R 336.1216 by citing the state effective date to read 7/01/2003.

The third action took place on March 7, 2019 (84 FR 8257). At that time, EPA published a final rule approving changes to the State of Ohio's air permitting rules at OAC 3745-31. However, the codification of that action erroneously listed the state effective date for rule 3745-31-01 as 5/01/2016, when the correct state effective date should be 3/20/2017. This document corrects the erroneous amendatory language published in the Federal Register on March 7, 2019 (84 FR 8257), in the table entitled "EPA-APPROVED OHIO REGULATIONS" on page 8259, for entry 3745-31-01 by citing the state effective date to read 3/20/2017.

This action amends the regulatory text to correct these errors. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity

for comment because we are merely correcting incorrect citations in previous actions. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b) (B).

### **Statutory and Executive Order Reviews**

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action is not an E.O. 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. In

addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by E.O. 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by E.O. 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to E.O. 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of E.O. 12988 (61 FR 4729,

February 7, 1996). EPA has complied with E.O. 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of **[insert date of publication in the Federal Register]**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the Federal Register.

This correction to 40 CFR part 52 for Michigan and Ohio is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: August 13, 2019.

Cheryl L Newton,  
Acting Regional Administrator, Region 5.

Accordingly, 40 CFR part 52 is amended by making the following correcting amendments:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (c) is amended:

i. Under the heading “Part 2. Air Use Approval”, by revising the entries for R 336.1203, R 336.1204, R 336.1206, R 336.1212, and R 336.1216; and

ii. Under the heading “Part 9. Emission Limitations and Prohibitions—Miscellaneous”, by revising the entries for R 336.1906, R 336.1910, R 336.1911, R 336.1915, R 336.1916, and R 336.1930.

The revisions read as follows:

**§ 52.1170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

EPA--APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
* * * * *				
Part 2. Air Use Approval				
* * * * *				
R 336.1203	Information required.	7/01/2003	8/31/2018, 83 FR 44485	
R 336.1204	Authority of agents.	7/01/2003	8/31/2018, 83 FR 44485	
* * * * *				

R 336.1206	Processing of applications for permits to install.	7/01/2003	8/31/2018, 83 FR 44485	
* *	* * * *			
R 336.1212	Administratively complete applications; insignificant activities; streamlining applicable requirements; emissions reporting and fee calculations.	7/01/2003	8/31/2018, 83 FR 44485	
R 336.1216	Modifications to renewable operating permits.	7/01/2003	8/31/2018, 83 FR 44485	
* *	* * * *			
<b>Part 9. Emission Limitations and Prohibitions—Miscellaneous</b>				
* *	* * * *			
R 336.1906	Diluting and concealing emissions	5/20/2015	12/19/2016, 81 FR 91839	
R 336.1910	Air-cleaning devices	1/19/1980	5/6/1980, 45 FR 29790	
R 336.1911	Malfunction abatement plans	5/20/2015	12/19/2016, 81 FR 91839	
* *	* * * *			
R 336.1915	Enforcement discretion in instances of excess emission resulting from malfunction, start-up, or shutdown	5/28/2002	2/24/2003, 68 FR 8550	
R 336.1916	Affirmative defense for excess emissions during start-up or shutdown	5/28/2002	2/24/2003, 68 FR 8550	
R 336.1930	Emission of carbon monoxide from ferrous cupola operations	12/20/2016	7/19/2018, 83 FR 34050	
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3. In § 52.1870, the table in paragraph (c) is amended by revising the entry for 3745-31-01 under "Chapter 3745-31 Permit-to Install New Sources and Permit-to-Install and Operate Program" to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \*

(c) \* \* \*

**EPA-APPROVED OHIO REGULATIONS**

<b>Ohio citation</b>	<b>Title/Subject</b>	<b>Ohio effective date</b>	<b>EPA Approval date</b>	<b>Notes</b>
*   *   *   *   *	*   *	*   *	*   *	
<b>Chapter 3745-31 Permit-to Install New Sources and Permit-to-Install and Operate Program</b>				
3745-31-01	Definitions	3/20/2017	3/7/2019, 84 FR 8257	Except for (I), (NN) (2) (b) and (c), (SSS) (1) (b), (CCCC) (2) (d) through (h), (QQQQ), (JJJJJ), and (BBBBBB) .
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